

**REMARKS**

**A. The Section 102 Rejections**

Claims 1 and 3-36 were rejected under 35 U.S.C. §102(e) based on the U. S. Patent Application Publication No. 2003/0016410 to Zhou et al (“Zhou”). Applicants respectfully disagree and traverse these rejections for at least the following reasons.

As indicated in the attached Declaration under 37 C.F.R. §1.132, a co-inventor of the Zhou application is also a co-inventor of the instant application. Therefore, Applicants respectfully submit that the Section 102(e) rejection is inappropriate because the present application and Zhou are not “by another” as is required by Section 102(e). Accordingly, Applicants respectfully request withdrawal of the pending rejections and allowance of claims 1, 3-18, 20-23 and 25-35 (claims 19, 24 and 36 have been cancelled).

**(i) claims 1 and 3-9**

Claims 1, 3-9 include the feature of, among other things: for all wavelengths available for transporting user signals in [a] network, storing wavelength performance data in a wavelength performance database. In contrast, Zhou does not disclose such storage or such a database. Further, the Applicants note that the Examiner has not cited a specific excerpt from Zhou that discloses this feature.

In more detail, while paragraphs [0056] and [0075] of Zhou refer to generalized “performance data”, there is no discussion of the type of data.

Further, while paragraph [0076] discusses a “wavelength upgrade”, there is no discussion about how such upgrades are carried out.

**(ii) claims 10-17**

Claims 10-17 include the feature of, among other things, determining a regenerator section performance parameter for each regenerator section and a path performance parameter for a path. In contrast, Zhou does not disclose determining such a regenerator section performance parameter. Further, the Applicants note that the Examiner has not cited a specific excerpt from Zhou that discloses this feature.

**(iii) claims 18-20**

Claims 18 and 20 (claim 19 has been canceled) include the features of, among other things, determining a reach-wavelength correspondence for all wavelengths available for transporting user signals in a network and storing said correspondence in a wavelength performance database. In contrast, Zhou does not disclose such a determination step. Further, the Applicants note that the Examiner has not cited a specific excerpt from Zhou that discloses these features.

**(iv) claims 21-24**

Claims 21-23 (claim 24 has been canceled) include the features of: a wavelength performance database for storing wavelength performance data for each wavelength available in said network; and a wavelength exerciser for setting-up test connections on all regenerator sections, for each wavelength unused on said regenerator section to populate said measurement database

with measured data. In contrast, Zhou does not disclose such a wavelength performance database or exerciser. Further, the Applicants note that the Examiner has not cited a specific excerpt from Zhou that discloses these features.

**(v) claims 25-32**

Claims 25-32 include the feature of, among other things, selecting a path for a connection based on performance data measured by an OSA. In contrast, the '124 Patent does not disclose the selection of a path based on OSA measured performance data. Further, the Applicants note that the Examiner has not cited a specific excerpt from Zhou that discloses this feature.

In more detail, though paragraph [0120] discusses an OSA, there is no discussion of using data measured by an OSA to select a path for a connection.

**(vi) claims 33-36**

Claims 33-35 (claim 36 has been canceled) are directed at a method of optimizing connections in a wavelength switched optical network, comprising, among other steps: modifying operation of a specified wavelength for increasing the reach of said selected wavelength; and controlling operation of all other wavelengths passing through said specified regenerator section for maintaining the performance data of each said all other wavelengths on said paths within a respective range, including

selecting one or more of said other wavelengths to provide greater wavelength spacing.

In contrast, Zhou does not disclose such features. Further, the Applicants note that the Examiner has not cited a specific excerpt from Zhou that discloses these features.

**Conclusion:**

Accordingly, Applicants respectfully request withdrawal of the pending rejections and allowance of claims 1, 3-18, 20-23 and 25-35.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John E. Curtin at the telephone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

**CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC.**

By: /John E. Curtin/

John E. Curtin, Reg. No. 37,602  
P.O. Box 1995  
Vienna, Virginia 22183  
(703) 266-3330